

**FILED**

Loren Jackson  
District Clerk

DEC 14 2009

NO. **2009-79317**

ENTERED  
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*[Signature]*

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LOREN JACKSON  
DISTRICT CLERK  
HARRIS COUNTY, TEX.  
2009 DEC 14 PM 1:26

LVNV FUNDING LLC

§

IN THE DISTRICT COURT

vs.

§

**55**

JUDICIAL DISTRICT

MENASHE MATSLIAH

§

HARRIS COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION, REQUEST FOR  
DISCLOSURES AND REQUEST FOR ADMISSIONS**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff, LVNV FUNDING LLC, a limited liability company, and files this Plaintiff's Original Petition complaining of Defendant, MENASHE MATSLIAH (S.S. No: XXX-XX-1675) and would respectfully show the following:

**DISCOVERY LEVEL**

1. Discovery will be conducted under *Level 1 of Rule 190 of the Discovery Rules of the Texas Rules of Civil Procedure.*

**SERVICE**

2. Plaintiff is a limited liability company located at 15 South Main Street, Suite 700, Greenville, SC 29601.

3. The Defendant, MENASHE MATSLIAH, may be served with citation at 10102 INWOOD DR, HOUSTON TX 77042-2440.

**VENUE**

4. Venue of this action is proper in the county named above because MENASHE MATSLIAH is an individual believed to be residing in said county at the time of the commencement

**8586240**

of this suit.

### **FACTS**

5. American Express Bank, FS ("The Original Creditor") issued a credit card in Defendant's name under its account number 378348364159001. Defendant received and used (or authorized the use of) the card and thereby became obligated to pay for the charges incurred with the card.

6. Defendant defaulted on the obligation to make monthly payments on the credit card account, and the card was subsequently canceled. The entire balance on the credit card account is presently due and payable in full.

7. The credit card account was charged off to profit and loss by the Original Creditor. The account has been assigned to Plaintiff, who is the party entitled to sue thereon.

### **FIRST CAUSE OF ACTION - BREACH OF CONTRACT**

8. The issuance of a credit card constitutes the offer of a contract. Use of a credit card constitutes acceptance of the terms of the card member agreement. Even in the absence of such an agreement, the issuance of the credit card constitutes an offer of credit, and the use of the credit card constitutes acceptance of the offer of credit.

9. By using or authorizing the use of the credit card, Defendant accepted the contract with the Original Creditor and became bound to pay for all charges incurred with the credit card. Defendant also became subject to all of the terms and conditions of the Original Creditor's cardholder agreement.

10. The Original Creditor sent to Defendant monthly bills reflecting, *inter alia*, all charges incurred with the credit card, the monthly payment due, and the total balance due. To the

best of Plaintiff's knowledge and belief Defendant did not ever send to the Original Creditor any disputes of the monthly bills or the charges reflected therein.

11. Defendant defaulted in the payment obligation on the credit card. Such breach of contract proximately caused the Original Creditor damages in the amount of the balance due on the credit card account. That obligation has been assigned to Plaintiff, who is the party entitled to enforce the contract and receive payment of the credit card balance.

12. Defendant is presently indebted to Plaintiff in the amount of \$13,341.41, that being the balance due through November 6, 2007. Plaintiff is also entitled to recover statutory interest at the rate of 6% from November 6, 2007 as provided by statute. Plaintiff seeks judgment for such sums, together with post-judgment interest at the maximum rate allowed by law.

#### **SECOND CAUSE OF ACTION - MONEY HAD AND RECEIVED**

13. In the alternative, and without waiving the foregoing, Defendant received and used (or authorized the use of) the credit card knowing that the Original Creditor expected to be repaid for all charges incurred with the card, together with interest thereon. With each use of the credit card the Original Creditor paid money on Defendant's behalf to the merchant with whom the credit card was used and as a result, Defendant holds the value of each transaction. Defendant is liable for repayment of such sums under the doctrine of money had and received.

14. Plaintiff is the assignee of the Original Creditor's right to be repaid by Defendant for such money had and received, and is entitled to recover from Defendant the sum of \$13,341.41, that being the balance due through November 6, 2007. Plaintiff is entitled to repayment of the value received by Defendant on said transactions in equity and good conscience. Plaintiff is also entitled to recover interest at the rate of 6% from November 6, 2007 as provided by law. Plaintiff seeks

judgment for such sums, together with post-judgment interest at the maximum rate allowed by law.

### **THIRD CAUSE OF ACTION - ACCOUNT STATED**

15. In the alternative, and without waiving the foregoing, Plaintiff asserts that Defendant's use of the credit card to purchase goods and services represented a periodic account, for which the Original Creditor generated regular monthly statements. Defendant is liable to Plaintiff, the assignee of the account, for the account balance, together with interest thereon at the rate allowed by law.

### **FOURTH CAUSE OF ACTION - QUANTUM MERUIT**

16. In the alternative, and without waiving the foregoing, Plaintiff would show that it is entitled to recover from the Defendant based upon Quantum Meruit. Defendant, with full knowledge and consent received the benefit of said purchases and services, and Defendant agreed, and by implication agreed, to pay reasonable full value for the purchase of the goods and services, and the cash advances and cash products which were financed on the account by the Original Creditor for the Defendant. Defendant is liable to Plaintiff, the assignee of the account, for the goods and services financed in the sum of \$13,341.41, that being the balance due through November 6, 2007, together with interest to date of judgment and post-judgment interest at the maximum rate allowed by law.

### **CONDITIONS PRECEDENT**

17. Through its undersigned attorney Plaintiff has demanded payment from Defendant, but Defendant has not satisfied such demand. Plaintiff has performed all conditions precedent to the filing of this action, or all such conditions precedent have occurred.

### ATTORNEY'S FEES

18. Pursuant to *V.T.C.A., Civil Practice and Remedies Code, Section 38.002*, Plaintiff is entitled to recover reasonable attorney's fees and court costs for the pursuit of this action. This case is being handled on a contingent fee basis, and since Plaintiff was required to employ the undersigned attorneys for a reasonable fee, Plaintiff alleges that Plaintiff should recover attorney's fees of at least \$4,447.14 which is the usual and customary fee in such cases. Plaintiff respectfully requests the court to take judicial knowledge of the usual and customary fee in such matters and of the contents of the case file. Plaintiff fully performed all conditions precedent for recovery on said account and for recovery of said attorney's fees, or all conditions precedent occurred.

### REQUEST FOR DISCLOSURES

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, you are requested to disclose, within fifty-one (51) days of service of this request, the information or material described in Rule 194.2 (a)-(k) as follows:

- (a) the correct names of the parties to the lawsuits;
- (b) the name, address, and telephone number of any potential parties;
- (c) the legal theories and, in general, the factual bases of the responding party's claims or defenses (the responding party need not marshal all evidence that may be offered at trial);
- (d) the amount and any method of calculating economic damages;
- (e) the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case;
- (f) for any testifying expert;

- (1) the expert's name, address, and telephone number;
- (2) the subject matter on which the expert will testify;
- (3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;
- (4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party;
  - (A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and
  - (B) the expert's current resume and bibliography;
- (g) any indemnity and insuring agreements described in Rule 192.3(f);
- (h) any settlement agreements described in Rule 192.3(g);
- (i) any witness statements described in Rule 192.3(h);
- (j) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills;
- (k) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party.

Pursuant to Rule 194.4, copies of documents and other tangible items ordinarily must be served with the response. If the responsive documents are voluminous, your response must state a reasonable time and place for the production of documents, and you must produce the documents at the time and place stated, unless otherwise agreed by the parties or ordered by the court, and must provide the requesting party a reasonable opportunity to inspect them. Pursuant to Rule 194.5, no objection is permitted to any request under Rule 194.2.

### **REQUEST FOR ADMISSIONS**

Pursuant to Rule 198 of the Texas Rules of Civil Procedure, Defendant is requested to admit the truth of each of the matters listed below. Responses to these Requests for Admissions are due fifty-one (51) days after service of this request. Defendant is requested to admit that:

1. Defendant applied for the credit card as referenced in Plaintiff's Original Petition.
2. Based upon Defendant's request, the account made a basis for Plaintiff's Original Petition was opened.
3. Defendant understood from the time the account made a basis of Plaintiff's Original Petition was opened that use of the credit card results in a loan being made to Defendant for the amount charged or cash advance requested.
4. Defendant understood from the time the account made a basis of Plaintiff's Original Petition was opened that Defendant is required and obligated to repay all charges or cash advances incurred on the account.
5. Defendant fully understood the risk and obligations associated with credit card accounts.
6. Defendant made the purchases and took cash advances using the credit card made a

basis of Plaintiff's Original Petition.

7. Plaintiff is the assignee of said account.
8. Plaintiff is the party entitled to sue on said account.
9. That the account reflected by the exhibits attached to Plaintiff's Petition in this cause is just and true.
10. The account reflected by the exhibits to Plaintiff's Petition in this cause is due.
11. The account reflected by the exhibits attached to Plaintiff's Petition in this cause is the balance due Plaintiff after all just and lawful offsets, payments and credits have been allowed.
12. Defendant received monthly statements showing the amount of charges or cash advances incurred for that monthly period, along with any payments or credits to the account, and specifying the monthly installment being due and owing.
13. The monthly statement received by Defendant specifically advised of Defendant's right to dispute any error contained in the monthly statement.
14. Since the account was opened, Defendant has not notified Plaintiff or the Original Creditor of any dispute or error regarding any information contained in any monthly statement.
15. Defendant did promise to pay Plaintiff for said account.
16. Plaintiff has requested Defendant to pay Plaintiff for said account.
17. Defendant has failed to pay Plaintiff for said account.
18. Plaintiff made written demand upon Defendant for payment of said account.
19. Written demand was made for payment of said account more than 30 days prior to



filing this lawsuit.

20. Defendant's last payment on said account was less than four (4) years from the date of the filing of this petition.
21. Defendant has breached the contract made a basis of Plaintiff's Original Petition.
22. Defendant owes Plaintiff the amount of \$13,341.41 on said account plus accrued interest.
23. At no time prior to the filing of this lawsuit did Defendant or Defendant's representative request verification of the debt from Plaintiff or its agents.
24. At no time prior to the filing of this lawsuit did Defendant or Defendant's representative dispute the debt owing on the account made a basis of Plaintiff's Original Petition.
25. Defendant is not a member of any military service with assignments or orders that would give the Defendant a right to a delay under the law.
26. Plaintiff is entitled to interest at 6% accruing from November 6, 2007.
27. The terms of the credit card agreement made a basis of Plaintiff's Original Petition allowed Defendant to be charged late fees if Defendant's monthly payments were late and over credit limit fees if Defendant exceeded the credit limit.
28. A reasonable attorney fee for Plaintiff's attorney for the prosecution of this lawsuit would be at least the amount of \$4,447.14.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited to appear and answer herein, and that upon final hearing, Plaintiff have judgment against Defendant for:

- a. \$13,341.41, which is the balance due on the credit card account as of November 6, 2007;
- b. statutory interest from November 6, 2007 at the rate of 6% per annum;
- c. post-judgment interest at the rate of 6% per annum;
- d. reasonable attorney's fees in the amount of \$4,447.14 with interest thereon in accordance with Article 5069-1.05 of the Revised Civil Statutes of Texas;
- e. all costs of court; and
- f. all such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

HULL & ASSOCIATES, P.C.  
Attorneys for Plaintiff

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